

2985

No. 15295

United States
Court of Appeals
for the Ninth Circuit

PAUL MITCHELL,

Appellant,

vs.

C. L. SNIPES,

Appellee.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Third Division

FILED
DEC - 3 1956

PAUL O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

McLAUGHLIN & ATKINSON,
First National Bank Building,
Anchorage, Alaska,

Attorneys for Appellees.

BELL, SANDERS & TALLMAN,
Central Building, P. O. Box 1599,
Anchorage, Alaska,

Attorneys for Appellant.

Wherefore, plaintiff prays judgment against the defendant as follows:

1. For the sum of \$142.88, together with interest at 6% thereon from October 15, 1955.
2. For plaintiff's costs and disbursements in this action, including statutory attorneys fees.

McLAUGHLIN & ATKINSON,
Attorneys for Plaintiff, First National Bank Building,
Anchorage, Alaska.

By /s/ KENNETH R. ATKINSON.

[Endorsed]: Filed April 27, 1956.

In the Justice's Court for the Territory of Alaska,
Anchorage Precinct

No. 9-277C

C. L. SNIPES,

Plaintiff,

vs.

PAUL MITCHELL,

Defendant.

JUDGMENT

This matter having come on for hearing on the 17th day of May, 1956, and on the 21st day of May, 1956, plaintiff appearing by and with counsel, Kenneth R. Atkinson, and the defendant appearing without counsel, and the plaintiff having offered

evidence in support of his complaint, and the defendant having offered no evidence,

It is the judgment of this court that the plaintiff have and recover of the defendant the sum of One Hundred Forty-two Dollars and Eighty-eight Cents (\$142.88), together with interest thereon at six per cent (6%) per annum from October 15, 1955, in the sum of \$5.00, court costs in the amount of \$15.00, statutory attorneys fees in the amount of \$22.00, marshal's fees in the amount of \$8.80; all for a total judgment of \$193.68; the same to bear interest at 6% from the date hereof.

It is further ordered that the sum of \$47.06 heretofore attached in this action be paid to plaintiff in partial satisfaction of this judgment, and that plaintiff's bond be exonerated.

Dated this 21st day of May, 1956, at Anchorage, Alaska.

[Seal] /s/ DAVID R. DAINES,
Deputy U. S. Commissioner, Ex Officio Justice of
the Peace.

[Endorsed]: Filed May 21, 1956.

In the Justice's Court for the Territory of Alaska,
Third Division, Anchorage Precinct

[Title of Cause.]

NOTICE OF APPEAL

To: C. L. Snipes, Plaintiff Above Named, and to
Kenneth R. Atkinson, Plaintiff's Attorney.

Notice Is Hereby Given that the defendant, Paul Mitchell, in the above-entitled action, hereby appeals to the District Court for the Territory of Alaska, Third Judicial Division, at Anchorage, Alaska, from that certain judgment entered in the above-entitled action on the 21st day of May, 1956, wherein the above-entitled Court returned judgment for the plaintiff in the sum of \$142.88 and interest in the amount of \$5.00, for plaintiff's court costs in the sum of \$15.00, for plaintiff's marshal's fees in the sum of \$8.80 and for an attorney's fee in the sum of \$22.00, for a total judgment against the defendant in the sum of \$193.68.

Defendant appeals from all and the whole of said judgment.

Dated at Anchorage, Alaska, this 26th day of May, 1956.

BELL, SANDERS &
TALLMAN,

By /s/ JAMES K. TALLMAN,
Of Attorneys for the
Defendant.

Service of Copy acknowledged.

[Endorsed]: Filed May 25, 1956.

In the District Court for the District of Alaska,
Third Division

Cause No. A-12, 275

C. L. SNIPES,

Plaintiff-Respondent,

vs.

PAUL MITCHELL,

Defendant-Appellant.

MOTION TO DISMISS APPEAL

Plaintiff-respondent moves the court for an order dismissing defendant-appellant's appeal.

This motion is based upon the records and file herein, and on the attached memorandum brief.

/s/ KENNETH R. ATKINSON,
Attorney for Plaintiff-Respondent, First National
Bank Building, Anchorage, Alaska.

NOTICE OF MOTION

Please take notice that the undersigned will place the above motion on the motion calendar for June 22, 1956, at 10:00 a.m., or as soon thereafter as counsel can be heard.

/s/ KENNETH R. ATKINSON,
Attorney for Plaintiff-Respondent, First National
Bank Building, Anchorage, Alaska.

Service of Copy acknowledged.

[Endorsed]. Filed June 15, 1956.

[Title of District Court and Cause.]

M. O. GRANTING MOTION TO
DISMISS APPEAL

Now at this time, this cause coming on to be heard before the Honorable Ben C. Connally, District Judge, the following proceedings were had, to wit:

M. O. granting motion to dismiss Appeal entered.
Attorneys notified.

Entered June 22, 1956.

[Title of District Court and Cause.]

ORDER DISMISSING APPEAL

This matter having come on for hearing on the 22nd day of June, 1956, at a regular motion calendar, plaintiff appearing by his attorney, Kenneth R. Atkinson, and defendant appearing by his attorney, James K. Tallman, and the court having heard the arguments of respective counsel, and being fully advised in the premises;

It Is Hereby Ordered and Adjudged that the above-entitled appeal be dismissed.

It Is Further Ordered that the judgment of the justice court on file herein, plus plaintiff's costs in this court on appeal, be entered as the judgment of this court pursuant to Section 68-9-12 ACLA 1949,

and Rules 5 and 25 of the Uniform Rules of the District Court.

Done this 25 day of June, 1956, at Anchorage, Alaska.

/s/ BEN C. CONNALLY,
United States District Judge.

Approved as to form:

/s/ JAMES K. TALLMAN,
Atty. for Defendant.

[Endorsed]: Filed and entered June 25, 1956.

In the District Court for the District of Alaska,
Third Division

Cause No. A-12,275

C. L. SNIPES,
Plaintiff-Respondent,
vs.

PAUL MITCHELL,
Defendant-Appellant.

JUDGMENT

This matter having come on for hearing on the 22nd day of June, 1956, and the court having heretofore made and entered its order dismissing this appeal and ordering the judgment of the justice court, plus the amount of plaintiff's costs in this court, to be entered as the judgment of this court;

Now, Therefore, It Is Adjudged, that the plaintiff, C. L. Snipes, have and recover of Paul Mitchell and Fireman's Fund Indemnity Company, his surety, on appeal, jointly and severally, the sum of One Hundred Ninety-three Dollars and Sixty-eight Cents (\$193.68) as the principal sum, and a further sum of Forty-eight and 42/100 Dollars (\$48.42) as attorney's fees on this appeal, for a total judgment of Two Hundred Forty-two Dollars and Ten Cents (\$242.10), in lawful money of the United States; the same to bear interest at the rate of six per cent (6%) per annum from date of entry.

Done this 25th day of June, 1956, at Anchorage, Alaska.

/s/ BEN C. CONNALLY,
United States District Judge.

Approved as to form.

/s/ JAMES K. TALLMAN,
Attorney for Defendant.

[Endorsed]: Filed and entered June 25, 1956.

[Title of District Court and Cause.]

MOTION

Comes now the Defendant-Appellant, above-named, Paul Mitchell, by and through his attorney, James K. Tallman of the law firm of Bell, Sanders & Tallman, and moves this Honorable Court to set aside the judgment rendered herein for the reason

that such judgment should not have been rendered in view of the facts and law applicable to this case.

This motion is made and based upon the pleadings, papers, and records on file herein and in particular upon the Affidavit of Paul Mitchell, attached hereto, and is made in accordance with rule 60 (b) (6) of the Federal Rules of Procedure.

Dated at Anchorage, Alaska, this 29th day of June, 1956.

BELL, SANDERS & TALLMAN,

By /s/ JAMES K. TALLMAN,
Attorney for Defendant-
Appellant.

Service of copy acknowledged.

[Endorsed]: Filed July 2, 1956.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska—ss.

Paul Mitchell, being first duly sworn, deposes and states:

That he is the Defendant-Appellant above named and makes this Affidavit for the purpose of attempting to obtain the relief from a judgment or an order entered against him.

Affiant states that he defended his case in the

Justice Court without benefit of counsel for the reason that he was unable to obtain an Attorney to represent him after his Attorney had withdrawn from his case at the last minute; Affiant further states that he cross-examined the witnesses for the Plaintiff in the case and offered pictures to the Justice trying the case as evidence in support of his case. Affiant further states that he paid the sum of Thirty Dollars (\$30.00) to obtain the pictures which were to be used in the support of his case, but the Justice refused to admit the pictures at the time that they were offered and that said pictures were never in evidence.

Affiant further states that he was present and did attend at the trial in the Justice Court and that he intended to defend against the suit and at no time had ever abandoned his defense, but rather entered into a stipulation with the Justice and the other Attorney that he would be allowed an appeal after judgment was rendered against him.

Affiant further states that he told both the opposing Attorney and the Justice that he decided to obtain an Attorney and that he wished to file a cross complaint and subpoena witnesses, but that the Justice refused to continue his case so that he could go ahead as planned.

Affiant further states that too much emphasis cannot be placed upon his attempt to obtain a lawyer and to continue with the proper defense of his case in the Justice Court and at no time did the Affiant ever intend to abandon his case in the Justice Court.

Further Affiant saeth not.

/s/ PAUL A. MITCHELL.

Subscribed and Sworn to before me this 29th day of June, 1956.

[Seal] /s/ JAMES K. TALLMAN,
Notary Public, Territory of
Alaska.

My Commission expires 11/26/58.

Service of copy acknowledged.

[Endorsed]: Filed July 2, 1956.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska—ss.

Paul Mitchell, being first duly sworn, deposes and states:

That he is the Defendant-Appellant above-named and makes this Affidavit for the purpose of obtaining relief from a judgment entered against him, wherein the above-entitled Court dismissed his appeal from the Commissioner's Court for the Anchorage Precinct;

That on or about March 26, 1956, I was taken to the Providence Hospital with a severe nose bleed. I was there two days and was supposed to be on

jury duty during that time. I requested a nurse to telephone the office of the Clerk of Court and report that I would not be able to report for duty on the Petit Jury panel, as I was confined to the hospital with a nasal hemorrhage.

Two days later, I was transferred to the 5005th Air Force Hospital, and was given several blood transfusions. I was discharged from the 5005th Hospital on April 5, 1956, and was told to take it easy for eight to ten weeks, as it would take about that period of time for me to return to normal physically. After my discharge, I returned to Dr. Sydnam, and she issued a certificate stating that I would need another week's convalescence. This document was turned over to my attorney, Mr. Boyko, who used it to secure a postponement of the case. A photostatic copy is herewith attached, together with a certificate issued later by the same doctor giving me a clean bill of health and dated May 16, 1956.

On or about April 10, 1956, I received a letter from the law firm of McLaughlin & Atkinson, dated April 3, 1956, which reads as follows:

“My client, Mr. C. L. Snipes, has been to see me about the foreclosure of the lien which he filed against your property on November 8, 1955.

“I recommended to Mr. Snipes that he institute action to foreclose, unless payment is made

for the full amount on or before the 20th day of April, 1956.

“GEORGE M. McLAUGHLIN.”

When I received this letter from Mr. McLaughlin, it was good news in that I had been trying to locate Mr. Snipes, in order to sue him and had been informed that he had gone to the States.

This letter was turned over to my attorney, Mr. Boyko, who agreed to handle the case. He gave me the name of a carpenter in Palmer and suggested I have the carpenter look over the work Mr. Snipes had done for me. During the construction season the carpenters are too busy to become involved in a case such as this so I contacted Mr. Harold H. Galliett, Jr., a registered civil engineer, asking for an estimate of his fee to look over the work and possibly appear in Court in my behalf. I told Mr. Boyko what I had done and he advised me not to spend so much money on an engineer as it would be better to give to some lawyer instead. Also Mr. Boyko had the trial postponed from May 10th to May 17th.

On or about the 16th day of May, I had Modern Studios take pictures of Mr. Snipes' work on the house, which could be used as evidence. I contacted the carpenter who had done some work for me while I was in the hospital, and he agreed to appear as a witness for me. On May 17th at 11 a.m. I stopped to see Mr. Boyko, but he was not in his office at that time. His secretary told me the case

was set for 11:30 a.m. that day. I then went to pick up the pictures from Modern Studio, which cost me \$30.00, and returned about 11:20 to see Mr. Boyko. He asked me where my witnesses were and I said I did not know, but he (the carpenter) had promised to be in court. I had wanted Mr. Boyko to subpoena witnesses and file a counterclaim, but Mr. Boyko had not. He said that he would not go into court with me without any witnesses, so I decided to handle the case myself. Mr. Boyko told me that I would lose if I did this and that I would also lose the other case he was handling for me. He gave me the file and I went to court alone.

Outside the courtroom, Mr. Snipes asked me if I had a lawyer and I told him I did not. When the court was in session, I asked for another postponement since I did not have a lawyer, had just been discharged from the doctor's care at 5 p.m. the previous day, and needed time to secure a court reporter, file a cross-complaint and subpoena witnesses. Mr. Snipes' attorney, Mr. Atkinson, strongly objected. The Judge allowed a three-day postponement, which included Friday, Armed Forces Day, and Saturday and Sunday, with the proviso that I allow Mr. Snipes to testify at that time. After his testimony, I cross-examined the witness and Mr. Snipes invoked the 5th amendment. Mr. Atkinson objected to having me cross-examine the witness, but the Judge overruled his objection. During the cross-examination, I attempted to offer to have Mr. Snipes identify the pictures I had had taken and the

Judge told me it was not the proper time for me to offer evidence, whereupon he recessed court.

After court was out, I went to the office of Wilson & Wilson, lawyers, hoping to secure one of them as counsel. However, after waiting for some time to see either one of them, I decided to try elsewhere. I also tried to see Mr. Ray Plummer, but he was out of town. I next contacted Mr. Carl Hutton, of Spenard, but he too, was too busy to take the case. In the meantime, I contacted a small contractor, a Mr. Tell, who advised me to see Mr. Mike Goggens, a professional estimator. Mr. Goggens suggested I contact Mr. Peter Kalamarides since the two of them had worked closely on previous cases. I could not reach Mr. Kalamarides until noon on Monday, when I met him coming from court with Mr. Lynn Kirkland. Mr. Kalamarides said he would take the case, but I should appear in Justice Court at 2 p.m. and ask for a postponement, to give him time to go over the case, then I should contact Mr. Goggens, the estimator and take him to observe the work Mr. Snipes had done.

At 2 p.m. I appeared in Justice Court, feeling ill (distressed from a boil in inside right ear), and informed the court that I still did not have a lawyer or witnesses. Mr. Atkinson, the plaintiff's lawyer, objected and told me that I looked good to him. I replied, "It takes a little more than looking good to stop a hemorrhage. That's what they told me a couple of weeks ago at the hospital when I was bleeding to death."

I informed the court that I contacted Mr. Kalamarides who advised me to ask for another postponement, until he could become familiar with the case. Mr. Atkinson objected to that stating that he saw Mr. Kalamarides in Federal Court that morning and he had said nothing about handling the case. This, of course, was due to the fact that I did not talk to Mr. Kalamarides until noon. Mr. Atkinson asked if I had paid Mr. Kalamarides his Fifty Dollars (\$50.00) retainer fee and I told him he had not asked for one. The Judge told me that he would allow another postponement, if there was some way that I could pay the plaintiff's attorney for his additional trips, but said it could not be done legally, therefore, I would have to go on with the trial.

Mr. Atkinson told the Judge he would not allow a lawyer a third postponement and didn't see why a guy trying his own case should be allowed a third postponement. I then stated that I was not prepared to try the case, that I did not have a lawyer, nor witnesses; in fact, asking me to do so would be like asking one to cut down a tree with his bare hands, or fly an airplane when he had never even seen one before. I further stated emphatically that I did not intend to capitulate because I wanted the case to come to trial and if I should be defeated I would want to appeal the case, which statement motivated Mr. Atkinson to say, in a very low voice (in fact, it was so difficult for me to hear what he said, the Judge had him repeat it), "The thing for the Court

to do is award his client the full judgment and that Mitchell could then appeal the case if he wanted to.”

The Judge agreed. The Judge asked me if I wanted to testify and I just simply said that I was not at all prepared for trial, and he pronounced the judgment against me, then asked if I wanted to give oral notice to appeal. The Judge then asked Mr. Atkinson what the bond should be and Mr. Atkinson said Five Hundred Dollars (\$500.00). That same evening, as soon as I was able to contact Mr. Kalamarides, I told him what had happened and he said he would file the appeal. After waiting a week or so, I was informed Mr. Kalamarides was too busy to start work on the appeal so I contacted Mr. Daines and explained my position. I understood him to say that if I would put up a cashier's check for Five Hundred Dollars (\$500.00) it would suffice as a bond. He also said, “Do you know how they work up here?” I told him “no” and he replied, “They get an appeal which takes about two or three years to come up and the party by then has gone Outside.” I asked him, “Couldn't I get him back?” and he told me that I would be the one to gain by the delay in this case. I said, “I don't want to win the case that way. I want a lawyer and try the case right away.”

Mr. Kalamarides was still too busy to work on the appeal so I called Mr. Bailey E. Bell, who accepted the case for his firm, turning the work over to Mr. James K. Tallman. They appealed the case and Mr. Atkinson filed a motion to have the appeal

rejected on the grounds that my case was ineligible since I did not testify in Court. I then signed an affidavit where I made the statement “* * * entered into a stipulation with the Justice and the other attorney that he would be allowed an appeal if the judgment was rendered against him,” whereas, actually I should have said, “the Justice agreed with Mr. Atkinson’s suggestion that his client should be awarded full judgment and that then Mitchell could appeal the case.” I actually did not agree to the above but accepted it merely on the grounds that I had no other alternative. The Justice at no time ever warned or instructed me that I would be ineligible to appeal the case if I did not testify, but rather it seems now that he did permit me to walk blindly into a legal abyss, so to speak.

The case is still pending.

/s/ PAUL MITCHELL.

Subscribed and Sworn to, before me this 19th day of July, 1956.

[Seal] /s/ JAMES K. TALLMAN,
Notary Public in and for
Alaska.

My Commission expires 11/26/58.

[Endorsed]: Filed July 19, 1956.

[Title of District Court and Cause.]

AFFIDAVIT

United States of America,
Territory of Alaska—ss.

David R. Daines, being duly sworn, deposes and says:

I.

That he has personal knowledge of the facts set forth herein for the reason that he presided as justice of the peace in a certain civil action in the Justice's Court, entitled *C. L. Snipes, Plaintiff, vs. Paul Mitchell, Defendant*.

II.

That the records of the Justice's Court show that the action referred to in paragraph I was continued from the 10th day of May, 1956, to the 17th day of May, 1956, with the consent of both parties.

III.

That on the 17th day of May, 1956, defendant Paul Mitchell, appeared for trial without an attorney, and asked affiant for a continuance for the purpose of obtaining counsel.

IV.

That affiant granted Paul Mitchell the requested continuance to May 21, 1956, subject to the provisions of Section 68-6-5 ACLA 1949, which attorney for plaintiff had invoked as a condition to the granting of a continuance.

V.

That on May 21, 1956, Paul Mitchell appeared without an attorney and requested another continuance, which request was denied.

VI.

That on the 21st day of May, 1956, plaintiff's attorney offered the previously taken deposition of plaintiff as plaintiff's case.

VII.

That when Paul Mitchell was asked by affiant if he wished to offer evidence he merely shrugged his shoulders and did nothing, and that affiant then orally rendered judgment for plaintiff, after which Paul Mitchell began asking questions as to the mechanics of an appeal.

VIII.

That affiant knows of no stipulation entered into between plaintiff's attorney, defendant, and/or the Court, regarding an appeal by defendant.

/s/ DAVID R. DAINES.

Subscribed and sworn to before me this 3rd day of July, 1956.

[Seal] /s/ KENNETH R. ATKINSON,
Notary Public in and for
Alaska.

My Commission expires 9/2/1959.

Receipt of copy acknowledged.

[Endorsed]: Filed July 3, 1956.

[Title of District Court and Cause.]

M. O. DENYING MOTION TO SET
ASIDE JUDGMENT

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to wit:

Now at this time, upon motion of James K. Tallman, for and in behalf of Defendant;

It Is Ordered that motion to set aside judgment in Cause No. A-12,275, entitled C. L. Snipes, plaintiff, versus Paul Mitchell, defendant, be and it hereby is denied.

Entered July 20, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: C. L. Snipes, Plaintiff above-named, and to Kenneth Atkinson, his attorney of record:

Notice Is Hereby Given, that the Defendant herein, Paul Mitchell, hereby appeals to the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, from the Judgment rendered herein dismissing the Defendant's Appeal from the Justice Court for Anchorage Precinct, and rendering Judgment against Appellant and Fireman's Fund Indemnity Company, Appel-

lant's surety, on appeal, which Judgment is dated the 25th day of June, 1956, and which Judgment is by reference made a part of this Notice of Appeal as fully as if set out herein; and from all Orders and Judgments rendered in the above-entitled cause.

Dated at Anchorage, Alaska, this 20th day of July, 1956.

BELL, SANDERS & TALLMAN,

By /s/ JAMES K. TALLMAN.

Service of copy acknowledged.

[Endorsed]: Filed July 20, 1956.

[Title of District Court and Cause.]

NOTICE OF MOTION

To: Kenneth Atkinson, attorney for plaintiff, C. L. Snipes:

Please take notice that on the 27th day of July, 1956, at the hour of 10:00 o'clock a.m., the undersigned, attorney for Defendant, will bring on an oral motion for the setting of a supersedeas bond in the above-entitled matter.

BELL, SANDERS & TALLMAN,

By /s/ JAMES K. TALLMAN,

Attorneys for Defendant.

Service of copy acknowledged.

[Endorsed]: Filed July 26, 1956.

[Title of District Court and Cause.]

M. O. SETTING TIME FOR HEARING MOTION FOR THE SETTING OF A SUPERSEDEAS BOND

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to wit:

Now at this time, upon the Court's motion;

It Is Ordered that Cause No. A-12,275, entitled C. L. Snipes, Respondent, versus Paul Mitchell, Defendant-Appellant, be and it hereby is set for Friday, July 27, 1956, at 10:00 o'clock a.m., for Hearing Motion for the Setting of a Supersedeas Bond.

Entered July 26, 1956.

[Title of District Court and Cause.]

AFFIDAVIT OF EDGAR PAUL BOYKO

United States of America,
Territory of Alaska—ss.

Edgar Paul Boyko, being first duly sworn, deposes and says:

1. My name is Edgar Paul Boyko. I am an attorney at law, licensed to practice in the Territory of Alaska, the State of Maryland, District of Columbia, and a member in good standing of the Bar of

the United States Supreme Court. I have been a licensed and practicing attorney since April, 1946.

2. During the early part of 1954, I was consulted by Mr. Paul A. Mitchell, the Defendant-Appellant in the above-entitled cause, in connection with another matter. At that time, Mr. Mitchell indicated to me that he considered himself somewhat of an expert on legal proceedings, having won a contested Land Office proceeding without the aid of legal counsel, on his own appeal to Washington, D. C. On various other occasions, Mr. Mitchell saw fit to advise me on just how his legal matters should be conducted by me on his behalf. Mr. Mitchell appeared to me rather unco-operative, litigious, and self-willed; he came to me with numerous petty complaints which he wished to have prosecuted by legal means and which I declined; he attempted on several occasions to tell me how to proceed in his matters and some of his instructions were entirely self-contradictory. As a result, on or about June 25, 1954, I requested Mr. Mitchell to obtain another attorney and tendered his file, together with a check in the full amount of the retainer he had previously paid me. However, Mr. Mitchell was most insistent at that time that he desired to have me as his attorney and assured me that he would co-operate thereafter. Upon this assurance, I retained his file.

3. Sometime in the early part of April, 1956, Mr. Mitchell called upon me, and presented to me a claim from the firm of McLaughlin & Atkinson, representing Mr. C. L. Snipes, concerning a sum

alleged to be due Mr. Snipes for work and labor performed in erecting a cabin on a tract near Anchorage, sought to be acquired by Mr. Mitchell under the public land laws. Mr. Mitchell stated to me that he thought that he had a meritorious defense to this claim, in that the work allegedly had not been done in the proper manner and would have to be replaced and in that he had already paid the claimant more than he was entitled to for his services.

4. Upon listening to Mr. Mitchell's statement of his defense, I suggested that he obtain the services of a qualified architect-engineer or estimator to evaluate the work done by Mr. Snipes and to furnish me with a written statement of such evaluation or estimate, together with photographs of the cabin, so that I might be able to prepare a defense.

5. Subsequently, Mr. Mitchell informed me that he had consulted a local firm of architects and had been quoted a fee of several hundred dollars for this estimate. At that time I advised him that this was an excessive amount to spend in the defense of this claim; that he could save himself money by obtaining the services of a qualified master-carpenter or similar craftsman and that if he desired to spend some additional funds, he should use them to obtain pictures and other suitable evidence. At no time did I tell Mr. Mitchell, as alleged in lines 24 through 27, that "it would be better to give it to some lawyer instead." The statement just quoted is an outright lie and misrepresentation.

6. Subsequently, Mr. Mitchell advised me that he had obtained the services of Mr. Harold H. Galliett, Jr., a registered civil engineer and experienced estimator, and that he had taken him out to the tract to look over the cabin. I telephoned Mr. Galliett and had a conversation with him, and he advised me that he had looked over the work and felt that the labor put into it by Snipes was worth approximately \$100.00 and that he had so told Mr. Mitchell. Mr. Mitchell indicated to me that he was dissatisfied with this estimate, because Mr. Mitchell felt that he was entitled to assert a counter claim against Mr. Snipes, whereas, if Mr. Galliett's estimate was correct, Mr. Mitchell would not be entitled to recover anything from Mr. Snipes. I thereupon advised Mr. Mitchell that, in view of the fact that the trial date was fast approaching, he had better get together with Mr. Galliett and see if Mr. Galliett would look at the property again and revise his estimate, or, otherwise, to retain another expert witness, in the event that he did not have confidence in Mr. Galliett's estimate.

7. Subsequently, Mr. Mitchell advised me that he had had an argument with Mr. Galliett and had discharged him. However, he had not obtained anyone else to make an estimate and the trial date was then only a few days away. However, inasmuch as Mr. Mitchell further advised me that he had been to the hospital with a severe nose bleed; that he felt weakened and dizzy and that he was still under doctor's care; and since he furnished me with a medical certificate, I was able to obtain a continu-

ance of the trial for a period of approximately a week or ten days. I advised Mr. Mitchell to make good use of this time to obtain additional evidence. However, three days before the trial Mr. Mitchell came into my office and stated that he still had no evidence, but that he still felt sick and could not appear. I advised him at that time, that Mr. Atkinson had opposed the last continuance on the ground that his client wished to leave the area on a job and that I could not expect consent to another continuance, but would ask for one if he furnished me with another medical certificate. I further advised him that if he could not obtain such a certificate, that he would have to be prepared to go to trial on May 17 at 11:30 a.m., the date set at the time of the first continuance, of which Mr. Mitchell had been informed previously.

8. I did not hear from Mr. Mitchell for several days, but on May 17, the date of the trial, he appeared in my office approximately thirty minutes before the trial was to commence and advised me that he had no witnesses of any kind and that he did not have a medical certificate as requested, but wished to go to trial. I thereupon asked him just how he proposed to prove his case, to which he replied "by cross-examination of the plaintiff, Mr. Snipes." I told him that I did not see how he could possibly win his case without evidence of any kind to support his contentions, except his own statement; that the estimate of Mr. Galliett, while not as favorable to him as he desired, would have been a great deal preferable to not having any witnesses

at all. Mr. Mitchell then became quite indignant and suggested that perhaps it would be better if, once again, he tried his own case. Upon ascertaining that he was serious, I turned over to him his entire file and he left my office. I subsequently saw him in the Justice's Court and overheard conversations pertaining to his request for a continuance because he was not represented by counsel, a request which, I understand, was granted. At no time did Mr. Mitchell inform me that a carpenter would appear in Court as his witness, as set forth in lines 4-6, on page 3 of his affidavit, which latter statement is entirely untrue. Moreover, at the time I observed Mr. Mitchell in the Justice's Court later, he was alone and there were no witnesses present in his behalf. He has not stated in his affidavit the name of this carpenter and I do not believe that such a witness ever existed. In any event, had Mr. Mitchell told me that he did have a witness to back up his testimony, I would not have hesitated to represent him and I would have represented him in any event, even in the face of the hopelessness of his case and his lack of co-operation, had he not insisted on handling his own trial. Knowing his previous attitude and his claim to legal prowess as a result of the Land Office case he won, I felt that in good conscience I should not insist on representing him, since he was bound to lose his case and would only blame me for it. I did not, of course, realize that I would be blamed either way.

9. Since then, it appears that Mr. Mitchell has been to several attorneys and has been making vary-

ing accusations against them as well as against the Deputy United States Commissioner. These accusations and innuendos are contained in three affidavits filed by Mr. Mitchell in the above-entitled case through his attorney James K. Tallman. The first of these affidavits, dated June 22, 1956, was ordered stricken from the record of this case by Judge Ben Connally. None of these affidavits were ever served upon me, nor was I ever advised by Mr. Tallman that he had filed these affidavits but I was limited to such information as Mr. Atkinson was kind enough to make available to me and to the chance of overhearing certain matters on Motion Day, in the outer offices of the Judge's Chambers and in the Justice's Court, based upon which I made an independent investigation and discovered the affidavits filed by Mr. Mitchell through Mr. Tallman. I subsequently obtained copies of these papers through the courtesy of Mr. Atkinson.

10. Based upon a careful examination of these affidavits and particularly the affidavit dated July 19, 1956, it is my belief as a trained and experienced attorney, that the allegations therein contained are immaterial to the issues herein; that they are impertinent in that these allegations are neither responsive nor relevant to the issues involved in the action and could not be put in issue or be given in evidence between the parties. Moreover, the said allegations are scandalous, in that they unnecessarily and cruelly reflect upon the moral and ethical character of affiant, as an attorney and officer of this Court, besides being irrelevant and untrue.

11. The foregoing affidavit is made based upon my personal knowledge and for the purpose of supporting my motion to strike from the record the aforesaid immaterial, impertinent and scandalous affidavit of Paul A. Mitchell and generally, to advise this Court in the administration of justice.

/s/ EDGAR PAUL BOYKO.

Subscribed and Sworn to before me, a Notary Public in and for the Territory of Alaska, this 27th day of July, 1956.

/s/ VERA LYNN KNUTSON,
Notary Public in and for
Alaska.

My commission expires: 2-20-1960.

Service of Copy acknowledged.

[Endorsed]: Filed July 27, 1956.

[Title of District Court and Cause.]

M. O. SETTING SUPERSEDEAS BOND

Now, at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to wit:

Now, at this time upon motion of James K. Tallman, for and in behalf of the defendant,

It Is Ordered that supersedeas bond in cause No. A-12,275, entitled C. L. Snipes, Plaintiff, versus Paul Mitchell, Defendant, be, and it is hereby, set at \$500.00.

Entered August 17, 1956.

[Title of District Court and Cause.]

SUPERSEDEAS CASH DEPOSIT

I, the undersigned Defendant-Appellant, acknowledge that I am bound to pay to C. L. Snipes, Plaintiff-Respondent, the sum of Five Hundred Dollars (\$500.00).

The condition of this supersedeas cash deposit is that whereas the Defendant-Appellant has appealed to the Court of Appeals for the Ninth Circuit from the judgment of this court, entered on the 25th day of June, 1956, if this Defendant-Appellant shall pay the amount of the final judgment herein if his appeal shall be dismissed or the judgment affirmed or modified together with all costs that may be awarded, then this supersedeas cash deposit is void, otherwise to be and remain in full force and effect.

The sum of Five Hundred Dollars (\$500.00) in cash is herewith deposited with the clerk of the above-entitled Court, to be applied in accordance with the above conditions.

Approved:

/s/ PAUL A. MITCHELL,
Defendant-Appellant.

Service of copy acknowledged.

[Endorsed]: Filed August 21, 1956.

[Title of District Court and Cause.]

DESIGNATION OF POINTS

I.

That the Court erred in granting Plaintiff's Motion to dismiss appeal for the reason that no findings of fact and conclusions of law were made by the Court and the Judgment appealed from herein is not based upon findings of fact and conclusions of law.

II.

That the Court erred in granting Plaintiff's Motion to dismiss appeal from the Justice Court for the reason that Defendant-Appellant is entitled to an appeal as a matter of law and that Defendant-Appellant's appeal was timely perfected from the Justice's Court to the District Court.

III.

That the Court erred in summarily dismissing Defendant-Appellant's appeal from the Justice's Court since said dismissal required the disposition of a genuine and material issue of fact.

Dated at Anchorage, Alaska, this 24th day of August, 1956.

BELL, SANDERS & TALLMAN,

By /s/ JAMES K. TALLMAN.

Service of copy acknowledged.

[Endorsed]: Filed August 24, 1956.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE
ORIGINAL RECORD

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that pursuant to Rule 10(1) of the rules of the United States Court of Appeals, Ninth Circuit, and of Rules 75(g) and 75(o) of the Federal Rules of Civil Procedure, and the designations of counsel, I am transmitting herewith the Original Papers in my office dealing with the above-entitled action.

The papers herewith transmitted constitute the record on appeal to the United States Court of Appeals, Ninth Circuit, San Francisco, California, from judgment filed and entered in the above-entitled cause by the above-entitled Court on June 25, 1956.

Dated at Anchorage, Alaska, this 4th day of September, 1956.

[Seal] /s/ WM. A. HILTON,
Clerk.

[Endorsed]: No. 15295. United States Court of Appeals for the Ninth Circuit. Paul Mitchell, Appellant, vs. C. L. Snipes, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed September 13, 1956.

Docketed: September 24, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.